



Isa
AP #

Patent

Docket No: AUS920000919US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Name et al. Rabindranath Dutta

Group Art Unit: 2143

Serial No.: 09/740,528

Confirmation No. 2040

Filed: December 18, 2000

Examiner: Arrienne M. Lezak

For: SYSTEM AND METHOD OF ADMINISTERING EXAM CONTENT

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being submitted via First Class Mail to: Mail Stop Appeal Briefs-Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

4-4-05

Mary Schnaiter

Date

Signature

MARY Schnaiter

BRIEF ON APPEAL

Mail Stop Appeal Briefs-Patent
Commissioner for Patents
P.O. Box 1450, Alexandria, VA 22313-1450

This is an appeal from the Office Action, mailed on November 10, 2004, finally rejecting claims 1-3, 5,14 and 16-21.

This Brief is being filed in triplicate. The fee for filing this Brief on Appeal is \$500.00, and the Commissioner is hereby authorized to deduct that amount from IBM Corporation, Deposit Account No. 09-0447.

If that amount is insufficient, or should any additional fees under 37 C.F.R. § 1.16 to 1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct said fees from IBM Corporation, Deposit Account No. 09-0447.

04/14/2005 MAHHE1 00000027 090447 09740528

01 FC:1402 500.00 DA

TABLE OF CONTENTS

REAL PARTY IN INTEREST	3
RELATED APPEALS AND INTERFERENCES	4
STATUS OF CLAIMS	5
STATUS OF AMENDMENTS	6
SUMMARY OF CLAIMED SUBJECT MATTER	7
ISSUES ON APPEAL	8
ARGUMENTS OF APPELLANTS	9-10
APPENDIX A - CURRENTLY PENDING CLAIMS	12-15
APPENDIX B - DeNicola et al. (U.S. Patent No. 6,288,753)	16-45

REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corp. (IBM) of Armonk,
New York

RELATED APPEALS AND INTERFERENCES

There are at present no appeals or interferences on any applications related to the present application.

STATUS OF CLAIMS

Claims 1-3, 5-14 and 16-21 are currently pending and have been finally rejected.
Claims 1-3, 5-14 and 16-21 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over further consideration of U.S. Patent No. 6,288,753 by DeNicola et al.

STATUS OF AMENDMENTS

Claims 1, 5, 8, 14, 16-19 have been amended. Claims 4 and 15 have been cancelled. Claims 20 and 21 have been added. All amendments to the claims have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a system and method for administering exam content over a network (112, FIG. 1). An exam administrator registers an exam with a server (800, FIG. 8). After a student on a client (700, FIG. 8A) makes a request to the server (800, FIG. 8) to take an exam (810, FIG. 8), the server sends instructions to the client (700, FIG. 8A) to take pictures of the student (836, FIG. 8C) during the exam. The picture or pictures (926, FIG. 9B) of the student captured during the exam are compared to an archived picture (928, FIG. 9B) of the student during the exam in order to verify the student's identity during the exam.

ISSUES ON APPEAL

1. Does the prior art reference (DeNicola), show the transmission of a visual image of a student in conjunction with a test?

2. Does the prior art reference (DeNicola), which the Examiner states “does not specifically enumerate a transmission of a student’s picture for directed use of student verification” nevertheless render the claims unpatentable under 35 U.S.C. §103(a)?

ARGUMENTS OF APPELLANTS

1. Does the prior art reference (DeNicola), show the transmission of a visual image of a student in conjunction with a test?

With respect to independent claims 1, 8, and 14, DeNicola et al. (U.S. Pat. No. 6,288,753; hereinafter referred to as “DeNicola”) does not suggest or teach the transmission of a visual image of a student in conjunction with the administration of a test. DeNicola suggests two objects of the invention: 1) “providing a system for providing live interactive distance learning to at least one remote location” and 2) “providing a system for providing on-line testing and evaluation to remotely located end users” (col. 4, lines 21-23 and 51-53). The only time images are transmitted is during the implementation of the first object of the invention. In other words, the student images of DeNicola are employed to provide the teacher, or “Instructor,” of a particular online course a class-like atmosphere (col. 4, lines 46-51; col. 8, lines 24-29). DeNicola describes the transmission of images to an “Instructor,” who views groups of students in class room settings (see Element 24, Figure 2).

In contrast, DeNicola’s testing, i.e. the second object of the invention, is performed on individual students in conjunction with a “Test Administrator” (col. 11, line 48 through col. 13, line 63). There is no suggestion of transmitted student images with respect to either student testing in general or the Test Administrator in particular. Even if DeNicola’s Instructor conducted testing, which Applicant contends is not suggested by the cited art, there is no mechanism suggested for the Instructor to correlate a specific student’s image from among images of groups of students to a specific test for the purpose of validating the test.

Due to the nature of DeNicola’s subject matter, i.e. providing a class-like atmosphere for an on-line course, there is no need to store student images, and DeNicola does not teach storing images in conjunction with a transcript for the purposes of verification. Thus, DeNicola does not teach or suggest Applicant’s claimed subject matter directed at storing images within a transcript for the purpose of verifying a student’s identity with respect to an exam.

2. Does the prior art reference (DeNicola), which the Examiner states “does not specifically enumerate a transmission of a student’s picture for directed use of student verification” nevertheless render the claims unpatentable under 35 U.S.C. §103(a)?

In order to verify a student’s, the cited art stored images within a transcript so that an image captured during an online test can be compared with the transcript picture. With respect to dependant claims 5, 20 and 21, DeNicola neither teaches nor suggests the storing of images within the transcript. Specifically, DeNicola produces “profiles of keywords, descriptions, course and class relevance, test/question/answer relevance, associated files and graphics” (col. 6, lines 11-14). The following excerpt lists the information included within DeNicola’s client report:

Reports are generated automatically or on-demand to show a client’s (i.e., a company’s) overall score, individual employees’ test scores, account status, course registration, participation and fulfillment of courses, and current rankings compared to other clients regionally, nationally, and overall that are taking the same course (FIG. 13).

(col. 15, lines 34-39). In other word, without the storing of a student image within a transcript there is no practical way for a Test Administrator to verify a student’s identity with an image taken during a test, which DeNicola does not provide for anyway.

In order to reject a claimed invention under §103(a), there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. (M.P.E.P. §706.02(j)). Although a prior art device “may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.” (*In re Mills*, 916 F.2d at 682, 16 USPQ2d at 1432)

As the cited art neither teaches every aspect of the claimed invention nor provides a suggestion or motivation for a student’s identity to be verified during a test, Applicant respectfully submits that the Examiner has incorrectly held that DeNicola renders the claimed subject matter unpatentable. It is thus respectfully requested that the rejection be withdrawn and that the present application be remanded to the Examiner for further action on the merits.

Applicant submits that the current grounds of rejection are in error and that the pending claims are in condition for allowance. An early indication thereof is respectfully solicited. Please charge any fee deficiency due with this Appeal Brief, or credit any overpayment, to Deposit Account No. 09-0447.

Registration Number 44,721	Telephone Number (512) 279-3106
Date Apr. 4, 2005	

Respectfully submitted,

By


Gregory K. Goshorn

Fortkort Grether + Kelton, LLP
Suite 3200
8911 N. Capital of Texas Hwy.
Austin, TX 78759
Telephone: (512) 279-3100
Facsimile: (512) 279-3101

APPENDIX A
(Currently Pending Claims)

1. (Previously presented) A method of administering exam content from a server to at least one client over a network, the method comprising:

registering at least one exam submitted by an exam provider with the server;

transmitting a video frame of a student to the server at least during the exam to verify the identity of the student;

generating a transcript in response to answers submitted by the student to at least one exam question resident on the server; and

providing access to the transcript to at least one third party.
2. (Original) The method of claim 1 further comprising providing an exam content generator with access to registered exams on the server.
3. (Original) The method of claim 1 further comprising providing an exam grader with access to a student's answers on the server.
4. (Cancelled)
5. (Previously presented) The method of claim 1 wherein the transcript further comprises at least one video image of the student.
6. (Original) The method of claim 1 further comprising registering a plurality of exams with the server.

7. (Original) The method of claim 1 further comprising recording a student's answers to at least one exam question presented by the server; and grading the student's answers to generate an exam result.

8. (Previously presented) A system for administering exam content to a number of clients over a network comprising:

a processor;

a memory coupled to the processor;

a computer readable medium coupled to the processor, the computer readable medium containing executable program instructions for:

registering at least one exam submitted by an exam provider with the server;

transmitting a video frame of a student to the server at least once during the exam to verify the identity of the student;

generating a transcript in response to answers submitted by the student to at least one exam question resident on the server; and

providing access to the transcript to at least one third party.

9. (Original) The system of claim 8 further comprising instructions for providing the exam grader with access to the answers submitted by the student.

10. (Original) The system of claim 8 further comprising instructions for providing an exam content generator with access to the registered exams.

11. (Original) The system of claim 8 wherein the server comprises a means for accepting and storing video images of the student.

12. (Original) The system of claim 8 wherein the server comprises a means for registering a plurality of exams with the server.

13. (Original) The system of claim 8 wherein the server comprises a means for recording a student's answers to at least one exam question presented by the server; and a means for grading the student's answers to generate the exam result.

14. (Previously presented) A computer program product on a computer readable medium for use in a data processing system for administering exam content from a server to a number of clients over a network, comprising:

instructions for registering at least one exam submitted by an exam provider with the server;

instructions for generating a transcript in response to answers submitted by a student to at least one exam question resident on the server;

instructions for transmitting a video frame of the student to the server at least once during an exam to verify the identity of the student; and

instructions for providing access to the transcript to at least one third party.

15. (Cancelled)

16. (Previously presented) The product of claim 14 further comprising instructions for providing an exam content generator with access to registered exams on the server.

17. (Previously presented) The product of claim 14 further comprising instructions for providing an exam grader with access to a student's answers on the server.

18. (Previously presented) The product of claim 14 further comprising instructions for registering a plurality of exams with the server.

19. (Previously presented) The product of claim 14 further comprising:
instructions for recording a student's answers to at least one exam question presented by the server; and
instructions for grading the student's answers to generate the exam result.

20. (Previously presented) The product of claim 14 further comprising instructions for recording in the transcript at least one video image of the student.

21. (Previously presented) The system of claim 8 further comprising storing within the transcript at least one video image of the student.

APPENDIX B
(U.S. 6,288,753 (DeNicola et al.))